IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Criminal Revision No.2314 of 2004
Date of Decision: March 25, 2009

Mrs.Vijay Shakti .....Petitioner

Versus

State of Punjab and others .....Respondents

Coram: Hon'ble Mrs. Justice Sabina

Present: Mr.Randeep Singh Rai, Senior Advocate with
Mr.Gauttam Dutt, Advocate for the petitioner.
Ms.Rita Kohli, Additional Advocate
General, Punjab
Mr.A.P.S.Deol, Senior Advocate with
Mr.Devinder Pal,Advocate for respondent No.2

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Sabina, J. *(oral)*

This petition has been filed by the petitioner-Vijay Shakti challenging order dated 2.6.2004 passed by the Additional Sessions Judge, Patiala whereby the revision petition filed by the State against order dated 6.12.2003 passed by the Chief Judicial Magistrate, Patiala on cancellation report in FIR No. 282 of 31.12.1986 registered at Police Station Kotwali, Patiala was not accepted.

In the present case, the FIR in question was lodged on the basis of the statement of Vijay Shakti, complainant. In her statement before the Police, she stated that on 5.5.1983, her husband was detained in Nabha Jail. At about 11.30 A.M., she was present on the second floor of her house

along with her sons Ashok Kumar, Suchinder Kumar and daughter-in-law Anita Rani. She was preparing food and suddenly, she heard noise of some persons in the street. There was smoke surrounding their house. After hearing the noise, she went towards their shop and saw a chair was burning there. She extinguished fire with the help of water and closed the door . In the meantime, police arrived at the spot and asked them to open the door. Her son Ashok Kumar informed some one on phone as the police was trying to break open the door. Complainant went to the roof of the house and saw that Constable Swaran Singh armed with rifle was roaming on the roof of the temple in front of her house. On seeing her, Constable threatened her to come down from the roof of her house, otherwise, she shall be shot dead . At the same time, Swaran Singh, Constable fired two shots. One shot hit wall of the house and the other shot hit Ashok Kumar, who was standing inside the house and was watching the scene in the street through the window. Bullet pierced from the door of the house and hit Ashok Kumar and as a result he died at the spot. Thereafter, the police asked them to open the door but they did not do so. The police party broke open the main door in the street and came in . Paramjit Singh asked other members of the police party that the dead body of Ashok Kumar be thrown out in the street. Complainant along with her daughter-in-law did not allow the police party to throw the dead body of Ashok Kumar in the street. Paramjit Singh ordered his policemen to give bat blows to them. She suffered a Lathi blow on her head and Suchinder Kumar raised alarm but nobody came inside their house because the area was under curfew. Suchinder Kumar had also suffered injuries on his feet. The dead body of Ashok Kumar was taken to Rajindra Hospital, Patiala. Suchinder Kumar also accompanied the police

party to the hospital. She was arrested by the police along with other persons and was later on released at about 7.30 P.M.When she came back from the police station, she found that the house-hold articles were broken and the gate was also broken. Her husband Vidhya Sagar was present in the house and she disclosed the entire incident to him. They never threw any brick bats nor attacked the police personnel. A false case has been registered against them under Section 307 of the Indian Penal Code (`IPC' for short).

During investigation, statements of Suchinder Kumar as well as Anita Rani were recorded under Section 161 of the Code of Criminal Procedure (`Cr.P.C.' for short) . After investigation, the police submitted a cancellation report. The Chief Judicial Magistrate, Patiala vide order dated 6.12.2003, after going through the record, found that prima facie, there was sufficient material to proceed against Swaran Singh, Paramjit Singh and Hardial Singh and accordingly, notice was issued to them for offence under Section 302/34 IPC. Aggrieved by the same, the State preferred a revision petition.

Vide impugned order dated 2.6.2004, the Additional Sessions Judge, Patiala, partly accepted the revision petition and it was ordered that now the Area Magistrate shall proceed against Swaran Singh, Constable only for commission of offence pending under Section 302 IPC and will not proceed against Hardial Singh and Paramjit Singh. Hence, the present revision petition by the complainant.

Learned counsel for the petitioner has submitted that the learned Additional Sessions Judge, Patiala had erred in partly accepting the revision petition. At the stage of the summoning of the accused, only a prima facie,

case was required to be made out. From the statement of the complainant party, it was evident that Swaran Singh, Paramjit Singh and Hardial Singh had in connivance with each other committed murder of Ashok Kumar. The Magistrate could summon the accused under Section 190(1)(b) of Cr.P.C. Reliance in this regard has been placed on **M/S India Carat Pvt. Ltd. V. State of Karnataka and another AIR 1989 Supreme Court 885.**

Learned State counsel, who is assisted by the counsel for respondent No.2, has submitted that the learned Additional Sessions Judge had rightly found that there is no material on record even to, prima facie, proceed against respondent No. 2 or 3 as they were not present at the spot when the shot was fired by Swaran Singh. Curfew had been imposed in the area. Swaran Singh was from Sangrur Police, whereas, Hardial Singh and Paramjit Singh were from Patiala police and as such, they could not have any common intention to commit murder of Ashok Kumar. It has been stated that so far as respondent No.3-Hardial Singh is concerned, he has since died.

A perusal of the statements of the complainant as well as Anita Rani and Suchinder Kumar recorded by the police under Section 161 Cr.P.C., placed on record, reveal that two shots were fired by Constable-Swaran Singh from his rifle. The first shot hit the wall of the house of the complainant, whereas the second shot hit Ashok Kumar through the door as he was standing near the window. Ashok Kumar died at the spot. Thereafter, as per the statement of the complainant, Paramjit Singh along with other police officials arrived at the spot and told the police party to throw the dead body of Ashok Kumar in the street. Learned Additional Sessions Judge has observed that from the statements of the witnesses, it

was not established that all the three accused i.e. Hardial Singh, Paramjit Singh and Swaran Singh had common intention to commit murder of Ashok Kumar. There was curfew in the area where the complainant was residing along with her family. Paramjit Singh had come to the spot after murder of Ashok Kumar by Constable Swaran Singh. They might have helped Swaran Singh or could have taken precaution that the situation may not go out of control after the murder of Ashok Kumar. But they could not be held guilty of murder of Ashok Kumar because they could have instigated Swaran Singh to commit murder of Ashok Kumar with his gun only if they had been present near the place of occurrence at the time of commission of murder of Ashok Kumar. The strictures passed against Hardial Singh and Paramjit Singh by the Inquiry Commission did not constitute commission of an offence under Section 302 IPC.

Learned counsel for the parties have also drawn my attention to the report of the commission of inquiry by Justice K.K.Dubey as per which it was Head Constable Mohan Singh and six constables, namely, Gurjant Singh, Jagdev Singh, Swaran Singh, Charan Singh, Darbara Singh and Pritam Singh had been detailed at that place, who had come from Sangrur District. Further on 2.5.1983, due to criminal riots, curfew had been imposed and the police from other districts and Central Reserve Police Force had been called on 3.5.1983. Vidhya Sagar was arrested by the police. The house of Vidhya Sagar was situated predominantly in Hindu locality. In these circumstances, the reasons given by the trial Court, while partly allowing the revision petition, are sound reasons. As per the statement of the complainant herself, Paramjit Singh, respondent No.2 had come to the spot after the occurrence and there is no, prima facie, material

on record to suggest that the Swaran Singh shared any common intention with Hardial Singh and Paramjit Singh when he committed the murder. There is no quarrel with regard to the proposition of law that the Magistrate can take cognizance of offence even if the police report is to the effect that no case was made out. However, in the present case, no offence under Section 302 IPC is, prima facie, made out against Hardial Singh and Paramjit Singh. Even otherwise the occurrence relates to the year 1983 and substantial justice appears to have been done.

The impugned order, thus, does not suffer from any infirmity warranting interference. Dismissed.

(Sabina)
Judge

March 25, 2009
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